2	MICHAEL L. TRACY, ESQ., SBN 237779 MTRACY@MICHAELTRACYLAW.COM MEGAN E. ROSS, ESQ., SBN 227776 MROSS@MICHAELTRACYLAW.COM LAW OFFICES OF MICHAEL TRACY 2030 Main Street, Suite 1300 Irvine, CA 92614 T: (949) 260-9171 F: (866) 365-3051	SEP 3 0 2013 RICHARD W. WIEKING CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION
8	Attorneys for Plaintiff Douglas Roberts UNITED STATES I	DISTRICT COURT
9	NORTHERN DISTRI	CT OF CALIFORNIA
10	,	DIVISION
11	DOUGLAS ROBERTS , AN INDIVIDUAL;	Case No.: 5:12-cv-05302-HRL COURT RUGN SURF OBJECTIONS TO DECLARATION OF
12	Plaintiff,	OBJECTIONS TO DECLARATION OF DAN O'CONNOR IN SUPPORT OF
13	vs.	PLAINTIFF'S REPLY TO MOTION OF PARTIAL SUMMARY JUDGMENT
14	TRIMAC TRANSPORTATION SERVICES	TANTIAL SUMMAKI JUDGMENI
15	(WESTERN), INC., A DELAWARE CORPORATION;	(RE: DOCKET No. 35-1)
16		40.
17	Defendant.	
18		
19	PLAINTIFF DOUGLAS ROBERTS	objects to the following statements from the
20 21	Declaration of Dan O'Connor in support of Pi	laintiff's Reply to Motion for Partial Summary
22	Judgment.	
23		
24		
25		
26		
27		
28		
	*	
	<u> </u>	1-
	OBJECTIONS TO	O DECLARATION

1 Obj. No.	Statement	Location	Objection	Ruling
2 1. 3 4 5 6 7 8 9	"When new drivers were hired, I explained to them that Air Products controlled dispatching, that some of the legs that were dispatched were out-of-state legs, and that the drivers may be required to haul an out-of-state leg."	2:16-18 ¶4	Lacks personal knowledge, FRE 602. Compare Paragraph 7, stating that Air Products, not the Declarant, controlled the dispatching of legs and provided dispatch instructions directly to the drivers without the Declarant being part of the process.	Sustained Overruled
0 2. 1 2 3 4 5 6 7	" all of the Santa Clara Drivers were eligible for and subject to being dispatched on out-of- state deliveries."	3:4-5 ¶6	Lacks personal knowledge, FRE 602. Compare Paragraph 7, stating that Air Products, not the Declarant, controlled the dispatching of legs and provided dispatch instructions directly to the drivers without the Declarant being part of the process.	✓ Sustained _ Overruled
8 3. 9 0 1 2 3 4 5 6 7	" I and other individuals at Trimac were asked to analyze the "TMW" information for all of the legs that were dispatched out of the Santa Clara Branch."	3:27-4:2 ¶10	Lacks personal knowledge, FRE 602. These amorphous "other individuals" performed some or all of the analysis. However, the Declarant lacks personal knowledge regarding the analysis performed by these other individuals located at Trimac, and the methods of calculation are not explained.	SustainedOverruled

	ı		Τ		1
1				Hearsay, FRE 802. To	Y Sustained
				the extent that the	
2				Declarant is attempting	Overruled
3	. :			to introduce into	
				evidence the contents of	
4				these "TMW" reports, the contents are hearsay.	
5				the contents are nearsay.	
				Calls for expert	
6				testimony, FRE 701.	
7				This declaration is based	Sustained
8				on statistical analysis,	./
٩١				but the Declarant has not	V Overruled
9				been qualified under	
$_{10}$				FRE 702 as an expert in statistical analysis.	
	4.	"To determine the	4:8-15	Lacks personal	Sustained
11	т.	total number of Santa	1.0-1 <i>0</i>	knowledge, FRE 602.	
12		Clara Drivers that	¶11	These amorphous "other	Overruled
		were dispatched on	"	individuals" performed	
13		an out-		some or all of the	
14		of-state leg from	·	analysis. However, the	
ا ۽ ،		2008 to 2010 for the		Declarant lacks personal	
15		Summary, we sorted		knowledge regarding the	
16		the TMW information relating		analysis performed by these other individuals	
₁₇		to the Santa Clara		located at Trimac, and	
۱′		Drivers to identify		the methods of	
18		any of the following		calculation are not	
19		three categories of		explained.	
		legs: (1) legs that			
20		originated in			
21		California with an		H EDE 000 To	SUSTAINED
		out-of-state		Hearsay, FRE 802. To the extent that the	9001VIII
22	· [destination, (2) legs that originated out-		Declarant is attempting	
23		of-state with a		to introduce into	
ا ہ		California		evidence the contents of	
24		destination, and (3)		these "TMW" reports,	
25		legs that originated		the contents are hearsay.	
26		out-of-state with an			- Charles Anna Anna Anna Anna Anna Anna Anna Ann
1		out-of-state		Calls for expert	OVERRULED
27		destination. Once		testimony, FRE 701.	
28		these legs were		This declaration is based	
~~		identified, we simply		on statistical analysis,	<u> </u>

1		counted the number		but the Declarant has not	
		of individual drivers		been qualified under	
2		that were identified on these out-of-state		FRE 702 as an expert in statistical analysis.	
3		loads and divided that		Statistical analysis.	
4		number by the total number of Santa			
5		Clara Drivers, 25, to			
6		percentage."			1
7	5.	"To determine the percentage of total	4:16-19	Lacks personal knowledge, FRE 602.	V Sustained
8		legs that were out-of-	¶12	These amorphous "other	Overruled
9		state legs in 2008,	H	individuals" performed some or all of the	_
10		2009, and 2010 for the Summary, we		analysis. However, the	
11		simply analyzed the TMW information		Declarant lacks personal knowledge regarding the	
12		that was already		analysis performed by	
13		sorted to identify the		these other individuals	
		out-of-state legs. For each year, we		located at Trimac, and the methods of	
14		determined the total		calculation are not	
15		number of out-of- state legs, the total		explained.	
16		number of all legs,		Hearsay, FRE 802. To	SUSTAINED
17		and divided the out-		the extent that the	
18		of-state legs by the total legs to arrive at		Declarant is attempting to introduce into	
19		a percentage."		evidence the contents of	
20				these "TMW" reports, the contents are hearsay.	
21				Calls for expert	
22				testimony, FRE 701.	overkuled
23				This declaration is based on statistical analysis,	
24				but the Declarant has not	
				been qualified under	
25				FRE 702 as an expert in statistical analysis.	,
26	6.	"To determine the	4:20-5:2	Lacks personal	✓ Sustained
27		percentage of total		knowledge, FRE 602.	
28		miles that were driven on out-of-state	¶13	These amorphous "other individuals" performed	Overruled

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1	legs in 2008, 2009,	some or all of the	
	and 2010 for the	analysis. However, the	
2	Summary, we first	Declarant lacks personal	
3	had to filter out some	knowledge regarding the	
١	of the legs on which	analysis performed by	
4	more than one Santa	these other individuals	
اہ	Clara Driver was	located at Trimac, and	
5	dispatched by Air	the methods of	
6	Products. This	calculation are not	
_	occurred when a team	explained.	
7	operation was		
8	dispatched on the leg.		
	Because both drivers	Hoorgay EDE 802 To	GUSTAINED
9	were dispatched on	Hearsay, FRE 802. To the extent that the	ansity her
10	the leg, the mileage information reported	Declarant is attempting	
10	the total number of	to introduce into	
11	miles on the leg for	evidence the contents of	
12	each of them. Where	these "TMW" reports,	
12	a leg number	the contents are hearsay.	
13	a reg number appeared more than	the contents are nearsay.	
	once in the	Calls for expert	
14	information, we only	testimony, FRE 701.	OVERRULED
15	counted the mileage	This declaration is based	
	for that leg number	on statistical analysis,	
16	once. After we	but the Declarant has not	
17	filtered the	been qualified under	
1 /	information, we	FRE 702 as an expert in	
18	calculated the total	statistical analysis.	
10	number of miles for		
19	all legs for each year.		
20	We then sorted the		
	information to		
21	identify the out-of-		
22	state legs for each		
	year in the same		
23	manner discussed		
24	above. We then		
	calculated the total		
25	number of miles on		
26	the out-of-state legs		
20	for each year and		
27	divided by the total		
ا م	number of miles on		
28	all legs for each year		

_ [<u></u>	to arrive at a			_	
1		percentage."				
2	7.	" he was eligible to be dispatched on	5:7-9	Lacks personal knowledge, FRE 602.	✓ Sustained	
3		any Air Products' leg,	¶14	Compare Paragraph 7,	Overruled	
4		and was subject to being dispatched by		stating that Air Products, not the Declarant,		
5		Air Products on an		controlled the		
6		interstate leg."		dispatching of legs and provided dispatch		
7				instructions directly to	.	
8				the drivers without the Declarant being part of		
9				the process.		
10	8.	When he was first employed, Roberts	5:5-6	Lacks personal knowledge, FRE 602.	Sustained	
11		was dispatched on a	¶14	1110 110 110	▼ Overruled	
12		leg from Santa Clara, California, to				
13		Oregon.		D. l The extenses	Sustained	
14				Relevance. The statute of limitations on all	7	
15				claims in this matter	V Overruled	
				would cut off any claims for the period when		
16				Roberts was first employed.		
17				employed.	<u> </u>	
18						
19						
20	DATED:	March 12, 2013	L	AW OFFICES OF MICHAE	EL TRACY	
21			/s	/ Megan E. Ross		
22			By: _		or Plaintiff	
23				MEGAN E. ROSS Attorney for ouglas Roberts	or eigning	
24						
25			ITI	S SO ORDERED:		
26				/h / 1		
27				HOWARD,RLLLOYD U.S/MAGISTRATE JUDG	25	
28				11 0 36 10	75	
			(DA	15:1/3		
		OF		-6- O DECLARATION		
	OBJECTIONS TO DECEMENTION					

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6	T: (949) 260-9171 F: (866) 365-3051	
7	Attorneys for Plaintiff Douglas Roberts	
8	·	DISTRICT COURT
9		CT OF CALIFORNIA
10		DIVISION
11	DOUGLAS ROBERTS , AN INDIVIDUAL;	Case No.: 5:12-cv-05302-HRL COURT RUUNGS RE
12	Plaintiff,	PLAINTIFF'S OBJECTIONS TO DECLARATION OF VICENT G.
13	vs.	CLARK USED IN SUPPORT OF
14	TRIMAC TRANSPORTATION SERVICES	DEFENDANT'S SUPPLEMENTAL OPPOSITION TO MOTION OF
15	(WESTERN), INC., A DELAWARE	PARTIAL SUMMARY JUDGMENT
16	CORPORATION; ,	(0 7 1 21 5)
17	Defendant.	(RE: DOCKET NO. 44-5)
18		
19	DI AINTIEE DOUGI AS ROBERTS	objects to the Declaration of VICENT G.
20		
21	CLARK used in support of Defendant's Su	applemental Opposition to Motion for Partial
22	Summary Judgment.	
23		
24		
25		
26		
27		
28		
		-1- TION OF VINCENT G. CLARK

1	Obj. No.	Statement	Location	Objection	Ruling
2 2	2.	"The purification process does not	2:19-21	Legal conclusion. FRE 602.	Sustained
3		change the essential	¶5		Y Overruled
4		character of the argon. The product is		Calls for expert testimony, FRE 701.	
5		97% argon when it		This declaration is based	OVERRULED
6		begins the process, and it is 99.99%		on chemical process and statistically analysis of	
7		argon when it is		such processing, but the	
8		delivered to the customer."	•	Declarant has not been qualified under FRE 702	
9				as an expert.	
10					
11					
$_{12}$	DATED:	May 14, 2013	L	AW OFFICES OF MICHAE	L TRACY
13		•	/e	/ Megan E. Ross	
14			By:		
15				EGAN E. ROSS Attorney fo ouglas Roberts	or Plaintiff
16				• • • • • • • • • • • • • • • • • • •	
17				Λ Λ	
18					<u> </u>
19			IT IS	SOORDERED:	
20				1 my	
21				J.S. MAGIS T/ RATE / JUDGI	=
22			A.	V 9/21/12	
23			DATE		
24					
25					
26					
27					
28					
				•	
				-2- ATION OF VINCENT G. CLARK	<u> </u>

1 2 3 4 5 6 7 8	MICHAEL L. TRACY, ESQ., SBN 237779 MTRACY@MICHAELTRACYLAW.COM MEGAN E. ROSS, ESQ., SBN 227776 MROSS@MICHAELTRACYLAW.COM LAW OFFICES OF MICHAEL TRACY 2030 Main Street, Suite 1300 Irvine, CA 92614 T: (949) 260-9171 F: (866) 365-3051 Attorneys for Plaintiff Douglas Roberts UNITED STATES I	
10	SAN JOSE	
11		COURT KOUTHE
12	II PIAINIIII. I	PLAINTIFF'S OBJECTIONS TO DECLARATION OF KEVIN
13	vs.	DECELLES USED IN SUPPORT OF
14	TRIMAC TRANSPORTATION SERVICES	DEFENDANT'S SUPPLEMENTAL OPPOSITION TO MOTION OF
15	(WESTERN), INC., A DELAWARE CORPORATION;	PARTIAL SUMMARY JUDGMENT
16	Defendant	(RE: DOCKET No. 46-6)
17	Defendant.	
18		
19	PLAINTIFF DOUGLAS ROBERTS	objects to the Declaration of KEVIN
20	DECELLES used in support of Defendant's S	upplemental Opposition to Motion for Partial
21		opp.
22	Summary Judgment.	
23		
24	·	
25		
26		
27		
28		
	-1	ı <u>.</u>
	OBJECTIONS TO DECLARA	

1	Obj. No.	Statement	Location	Objection	Ruling
2	1.	"I have reviewed the	3:19-26	Hearsay, FRE 802. To	Sustained
3		documents attached to this declaration as	4:1-3	the extent that the Declarant is attempting	Overruled
4		Exhibits 1, 2, and 3		to introduce into	
5		and compared them with the spreadsheet I	¶7	evidence the contents of these "TMW" reports,	
6		created when I ran		the contents are hearsay.	
7		the queries. <i>Exhibit 1</i> is a true and accurate		Calls for expert	Sustained
8		copy of the 2008		testimony, FRE 701.	$\left[\frac{1}{2} \right]$
		TMW information tab in the spreadsheet		This declaration is based on statistical analysis,	<u>▼</u> Overruled
9		I created when I ran		but the Declarant has not	
10		the query of the TMW database.		been qualified under FRE 702 as an expert in	
11		Exhibit 2 is a true and		statistical analysis.	
12		accurate copy of the 2009 TMW			
13		information tab in the			
14		spreadsheet I created when I ran the query			
15		of the TMW			
16		database. <i>Exhibit</i> 3 is a true and accurate			
17		copy of the 2010			
18		TMW information tab in the spreadsheet			
19		I created when I ran			
20		the query of the TMW database. The			
21		columns in the			1
		exhibits show the TMW system]		
22		information for,			
23		among other things,			
24		the leg number, total miles, driver, branch,			
25		start date, origin			
26		state, leg completion date, destination		* -	
27		state, and the			and the state of t
28		commodity transported. The data	1		

					· · · · · · · · · · · · · · · · · · ·
1	, i	in these exhibits is		· · · · · · · · · · · · · · · · · · ·	
		the same data that			
2		was inputted into the			
2		TMW system. The			
3		only difference is the			
4		format. Trimac			
		personnel regularly			
5		run reports similar to			,
6		these 3 exhibits in the			·
		normal course of			
7		business."			
8	2.	"In preparing to	4:4-25	Hearsay, FRE 802. To	Sustained
٥		provide this		the extent that the	
9	:	Declaration, I was	5:1-3	Declarant is attempting	▼ Overruled
10		asked to analyze the	-50	to introduce into	
10		information provided	¶8	evidence the contents of	
11		in Exhibits 1-3		these "TMW" reports,	
		related to the legs		the contents are hearsay.	
12		dispatched to the			0 () . 1
13		following drivers:		Calls for expert	Sustained
15		Randall Banks,		testimony, FRE 701.	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
14		Martin Baudoin,		This declaration is based	V Overruled
1.5		Michael Brogdon,		on statistical analysis,	
15		Kerry Bushnell, Cary		but the Declarant has not	
16		Carandang, Victor		been qualified under	
		Cunningham,		FRE 702 as an expert in	
17		Thomas Darnell,		statistical analysis.	
18		Anthony Davis,			
		Randal Gorshe,			
19		Raymond Greene,			
20		Robert Hass, Christopher Larsen,			
20		Michael Magee, Oleg			
21		Marchenko, Leo			
22		Mueller, Michael			
22		Myers, Robert			
23		Penicks, Ronald			
		Phillips, Leland Pike,	-		
24		Douglas Roberts,			
25		George Sabilino,			
		David Surgick,			
26		Rocky Torrecillas,			
27		Jason Vieth, and			
		Christopher Wilks			
28		(the "Santa Clara			
	 		<u> </u>		

1	Drivers").			
	Specifically, I was			
2	asked to identify the following:			
3	Tollowing.			
4	a. The total number			
5	of Santa Clara Drivers dispatched on			
6	legs that were (1)			
	from CA to another			
7	state, (2) between two non-CA states,			
8	and (3) from another			
9	state to CA ("out-of-			
10	state legs").			1
11	b. The total number			
	of Santa Clara Drivers dispatched on			
12	local California			
13	deliveries			
14	of argon in California from 2008-2010.			
15	110111 2000 2010.			
16	c. The total number			
17	of legs dispatched to the Santa Clara			
	Drivers in 2008,	i 		
18	2009, and			
19	2010.			
20	d. The total number	<u> </u>		
21	of out-of-state legs dispatched to the			
22	Santa Clara Drivers			
23	for 2008,2009,2010.			
-	e. The total number			
24	of legs of argon			
25	dispatched to the			
26	Santa Clara Drivers for local delivery in			
27	California in 2008,		i i	
28	2009, and 2010.			· .
~~				<u> </u>

					
1		f. The total miles			
2		driven on all legs dispatched to the			
		Santa Clara Drivers			
3		in 2008, 2009,2010.			
4		The total miles			
5		g. The total miles driven on all legs			
6		dispatched to the			
		Santa Clara Drivers			
7		on out-of-state legs in 2008,2009,2010.			
8		2000,2007,2010.			
9		h. The total number			
10		of miles driven on the legs of argon			
11		dispatched to the			
		Santa Clara			
12		Drivers for local delivery in California			
13		in 2008, 2009, and			
14		2010.			
15		i. A list of the			
16		products that were			
		hauled on out-of-state legs during 2008 and			
17		2010."			
18	3.	"A summary of my	5:11-21	Lacks personal	Sustained
19		analysis of the information	¶10	knowledge, FRE 602.	Overruled
20		contained in Exhibit	10	Hearsay, FRE 802. To	
21		1-3 is attached to this		the extent that the	-OVERRULED
22		declaration as <i>Exhibit</i> 4 (the "Summary").		Declarant is attempting to introduce into	-OICHAULO-Y
		Exhibit 4 contains		evidence the contents of	
23		three tables. The first		these "TMW" reports,	Sustained
24		table is titled "Summary of Santa		the contents are hearsay.	Overruled
25		Clara Drivers from	44	Calls for expert	1 ————————————————————————————————————
26		2008-2010." The		testimony, FRE 701. This declaration is based	
27		second column of the first table shows the	ļ	on statistical analysis,	
		total number of Santa	Ĭ	but the Declarant has not	
28		Clara Drivers	<u> </u>	been qualified under	

-5-

, [dispatched on either		FRE 702 as an expert in	
1	an out-of-state leg or		statistical analysis.	
2	local argon leg. This			
3	number was derived			
3	from combining the			
4	list of 20 Santa Clara			
5	Drivers that hauled a local argon leg and			
	the 16 Santa Clara			
6	Drivers that hauled			
7	an out-of-state leg.			
	The third column			
8	shows the percentage			
9	of Santa Clara			
10	Drivers who hauled			
10	those legs by dividing the number			
11	in the second column	·	•	
12	by 25, the number of			
	Santa Clara Drivers.			
13	The fourth column		·	
14	shows the total			
1 ~	number of Santa			
15	Clara Drivers who			
16	were dispatched on out-of-state legs. The			
17	fifth column shows			
1/	the percentage of			
18	Santa Clara Drivers			
19	who hauled those			
	legs by dividing the			
20	number in the second			***************************************
21	column by 25, the number of Santa			
22	Clara Drivers."			
	4. The second table in	5:22-26	Lacks personal	Sustained
23	the Summary is titled		knowledge, FRE 602.	<u> </u>
24	"Summary of	6:1-8		▼ Overruled
	Interstate Legs from		Hearsay, FRE 802. To	
25	2008-2010." The	¶11	the extent that the	auganico
26	second column of the	<u></u>	Declarant is attempting • to introduce into	- OVERRULED
	table shows the total number of legs		evidence the contents of	
27	dispatched to Santa		these "TMW" reports,	Sustained
28	Clara Drivers in		the contents are hearsay.	
		-6	-	

2008, 2009, and 2010. Legs that were dispatched to more than one driver to complete were counted twice. The third column of the table shows the total number of legs in second column. The fifth column of the table shows total number of legs in second column. The fifth column of the table shows total number of legs in second column. The fifth column of the table shows total number of legs in second column. The fifth column of the table shows total number of state legs dispatched in 2008, 2009, and 2010. The fifth column of the table shows the number of legs in second column. The fifth column of the table shows total number of legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in 2008, 2009, and 2010. The sixth column of the table shows the number of miles driven on all of the legs dispatched in 2008, 2009, and 2010. The sixth column of the table shows the number of miles on out-of-state legs and local argon legs. For the fifth and sixth columns, the miles related to legs that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the percentage of				
dispatched to more than one driver to complete were counted twice. The third column of the table shows the total number of olegs in second column. The fifth column of the table shows total number of legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in 2008, and 2010. The fifth column of the table shows the number of miles driven on all of the legs dispatched in 2008, and 2010. The fifth column of the table shows the number of legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in 2008, and 2010. The sixth columns, the miles related to legs that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the	1	2008, 2009, and		V Overruled
than one driver to complete were counted twice. The third column of the table shows the total number of out-of-state legs compared to the table shows the percentage of interstate legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in 2008, 2009, and 2010. The state legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in 2008, 2009, and 2010. The sixth column of the table shows total number of miles driven on all of the legs dispatched in 2008, 2009, and 2010. The sixth column of the table shows the number of miles driven on all of the legs and local argon legs. For the fifth and sixth columns, the miles related to legs that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the	1			
complete were counted twice. The third column of the table shows the total number of out-of- state legs and local argon legs that were dispatched in 2008, 2009, and 2010. The fourth column of the table shows the percentage of interstate legs compared to the total number of legs by dividing the number of legs in the third column by the number of legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in 2008, 2009, and 2010. The sixth column of the table shows the number of miles on out-of-state legs and local argon legs. For the fifth and sixth coltimns, the miles related to legs that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the	2	1 1		
counted twice. The third column of the table shows the total number of out-of-state legs and local argon legs that were dispatched in 2008, 2009, and 2010. The fourth column of the table shows the percentage of interstate legs compared to the total number of legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in 2008, 2009, and 2010. The sixth column of the table shows total number of miles driven on all of the legs dispatched in 2008, 2009, and 2010. The sixth column of the table shows the number of miles on out-of-state legs and local argon legs. For the fifth and sixth columns, the miles related to legs that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the	3	l l	l l	
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20	18	legs dispatched in		
20 counted once. 21 column of the table shows the number of miles on out-of-state legs and local argon legs. For the fifth and sixth columns, the miles related to legs that were dispatched to more than one driver were only counted once. 27 Finally, the seventh column shows the	19	l 1		
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miles on out-of-state legs and local argon legs. For the fifth and sixth columns, the miles related to legs that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the	20			
legs and local argon legs. For the fifth and sixth columns, the miles related to legs that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the	21			
legs. For the fifth and sixth columns, the miles related to legs that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the	22			
sixth columns, the miles related to legs that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the	- 1			
that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the	23			
that were dispatched to more than one driver were only counted once. Finally, the seventh column shows the	24	1 1		
driver were only counted once. Finally, the seventh column shows the				
counted once. Finally, the seventh column shows the	25	1		
Finally, the seventh column shows the	26	;		
column shows the	27	<u> </u>		
	41			
	28	1 ↓	<u> </u>	

					
1		interstate miles			
		driven by the Santa			
2		Clara Drivers by			
3		dividing the number of miles in the sixth			
		column by the			
4		number of miles in			
5		the fifth column.			
6	5.	The third table in the	6:9-20	Lacks personal	Sustained
ا		Summary is titled		knowledge, FRE 602.	1
7		"Summary of Out-of-	¶12	77 77 77 77 77 77 77 77 77 77 77 77 77	<u>Y</u> Overruled
8		State Legs from		Hearsay, FRE 802. To	
		2008-2010." The		the extent that the	OVERRULED
9.		second column of the table shows the total		Declarant is attempting to introduce into	104014
10		number of legs		evidence the contents of	
		dispatched to Santa		these "TMW" reports,	Sustained
11		Clara Drivers in		the contents are hearsay.	<u> </u>
12		2008, 2009, and			✓ Overruled
12		2010. Legs that were		Calls for expert	
13		dispatched to more		testimony, FRE 701.	
14		than one driver to		This declaration is based	
15		complete were counted twice. The		on statistical analysis, but the Declarant has not	
1.5		third column of the		been qualified under	
16		table shows the total		FRE 702 as an expert in	
17		number of out-of-	•	statistical analysis.	
		state legs that were			
18		dispatched in			
19		2008,2009, and 2010.			
		The fourth column of			
20		the table shows the			
21		percentage of out-of- state legs compared		·	
22		to the total number of			
		legs by dividing the			
23		number of legs in the			
24		third column by the			
		number of legs in			
25		second column. The			
26		fifth column of the			
		table shows total number of miles	İ		
27		driven on all of the			
28		legs dispatched in			
		<u> </u>			

1		2008,2009, and 2010.			,	
		The sixth column of				
2		the table shows the				
3		number of miles on out-of-state legs. For				
4		the fifth and sixth				
4		columns, the miles				
5		related to legs				
6		dispatched to more				
		than one driver were				
7		only counted once.				
8		Finally, the seventh column shows the				
9		percentage of out-of-				
9		state miles driven by				
10		the Santa Clara				
11		Drivers by dividing				
		the number of miles in the sixth column				
12		by the number of				
13		miles in the fifth				
14		column.				
	6.	The following	6:21-22	Lacks personal	SUSTAINED	
15		products were hauled	- ¶12	knowledge, FRE 602.	040	
16		on out-of-state legs from 2008 to 2010:	¶13			
17		Argon, Nitrogen,				
		Oxygen, Hydrogen				
18		Liquid Cryogenic,				
19		Helium, Helium				
20		Gaseous.				
21		•				
22						
23	DATED:	May 14, 2013	I	AW OFFICES OF MICHA	AEL TRACY	
		\wedge				
24		/)		s/ Megan E. Ross		
25	IT IS SO	ORDERED:	By:	MEGAN E. ROSS Attorney	for Plaintiff	
26		11 /2001		Douglas Roberts	TOT & AMILITATI	
				S		
\sim		HOWNRD-RALLOYD/	;			
27	U.S. MAGISTRATE JUDGE					
28	U.S	0.0. 1. 0. 1.7				
	U.S DATE: _	9 30 13				
		1 9/36/13		-9-		
		0 9/30/13	TO DECLAR	-9- RATION OF KEVIN DECELLES		

1	MICHAEL L. TRACY, ESQ., SBN 237779	
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	T: (949) 260-9171 F: (866) 365-3051	
7		
8	Attorneys for Plaintiff Douglas Roberts	DICEDICE COLUE
9	<u>-</u>	DISTRICT COURT
10	·	CT OF CALIFORNIA
11	SAN JUSE DOUGLAS ROBERTS , AN INDIVIDUAL;	Case No.: 5:12-cv-05302-HRL
12	Plaintiff,	PLAINTIFF'S OBJECTIONS TO
13	vs.	DECLARATION OF JANE DELISI USED IN SUPPORT OF DEFENDANT'S
14		SUPPLEMENTAL OPPOSITION TO
15	TRIMAC TRANSPORTATION SERVICES (WESTERN), INC., A DELAWARE	JUDGMENT
16	CORPORATION; ,	(
17	Defendant.	(RE: Docker No. 44-7)
18		
19	DI ADIPIEE DOUGLAG DODEDTO	abjects to the Declaration of IANE DELICI
20		objects to the Declaration of JANE DELISI
21	used in support of Defendant's Supplementa	al Opposition to Motion for Partial Summary
22	Judgment.	
23		
24		
25		
26		
27		
28		·
		1- RATION OF JANE DELISI

1	Obj. No.	Title	Location	Objection	Ruling
2	1.	Declaration of Jane	Document		Sustained
3		Delisi in Support of Defendant's	#43-9	witness pursuant to Rule 26(a)(1).	Overruled
4 -	·	Opposition to Plaintiff's Motion for			
5		Partial Summary Judgment			
6 7		_			
8					
9					
10					
11					
12	DATED:	May 14, 2013	LA	W OFFICES OF MICHAE	L TRACY
13			/s/	Megan E. Ross	
14			By:	EGAN E. ROSS Attorney fo	or Plaintiff
15				auglas Roberts	
16 17				\wedge \wedge	
18			ГТ	IS SO GENERAL	
19				IS SO ORDERED:	
20				HOWARD R. 1 LAY	n:
21				HOWARD R. LLOYI U.S. MAGISTRATE JU	DGE
22			_ DA	TE: 36/13	
23				' V	
24					
25					
26					
2728					
20					
		OPIECTIO		2- RATION OF JANE DELISI	
	OBJECTIONS TO DECLARATION OF JANE DELISI				

2 3 4 5		DISTRICT COURT CT OF CALIFORNIA
10	SAN JOSE	DIVISION
11	DOUGLAS ROBERTS , AN INDIVIDUAL;	Case No.: 5:12-cv-05302-HRL COUKT RULINGS RE
12	Plaintiff,	PLAINTIFF'S OBJECTIONS TO DECLARATION OF VICENT G.
13	VS.	CLARK USED IN SUPPORT OF DEFENDANT'S MOTION FOR
14	TRIMAC TRANSPORTATION SERVICES	
15	(WESTERN), INC., A DELAWARE CORPORATION; ,	(Pm. Darward) 1141)
16	Defendant.	(RE: Docker No. 47-1)
17	Defendant.	
18		
19	PLAINTIFF DOUGLAS ROBERTS	objects to the Declaration of VICENT G.
20 21	CLARK used in support of Defendant's Moti	on for Partial Summary Judgment (Document
22	#44-2).	
23	·	
24		
25		
26		
27		·
28		
		1- TION OF VINCENT G. CLARK

1	Obj. No.	Statement	Location	Objection	Ruling
2	1.	"The purification	2:19-21	Legal conclusion. FRE	Sustained
3		process does not change the essential	¶5	602.	V Overruled ✓
4		character of the argon. The product is		Calls for expert testimony, FRE 701.	
5		97% argon when it		This declaration is based	
6		begins the process, and it is 99.99%		on chemical process and statistically analysis of	OVERRULED
7		argon when it is delivered to the		such processing, but the Declarant has not been	
8		customer."		qualified under FRE 702	
9			<u> </u>	as an expert.	
10					
11			_		T TOD A CIVI
12 13	DATED:	May 21, 2013	LA	W OFFICES OF MICHAE	LTRACY
14		•	/s/ By:	Megan E. Ross	
15			M	EGAN E. ROSS Attorney for	or Plaintiff
16			DС	ouglas Roberts	
17				\bigwedge	
18			l IT IS	SO ORDERED:	9.
19				Mhm	2.5.1 2.5.1
20				HOWARD R. ŁLOYD U.S. MAGISTRATE JUDO	
21			1 .	$\alpha \ln 12$	E
22			DATE	= 7/50/15	THE STATE OF THE S
23				/ 	
24					
25					
26					
2728					
20					
				2- TION OF VINCENT G. CLARK	

I	l	
1	MICHAEL L. TRACY, ESQ., SBN 237779	
2	MTRACY@MICHAELTRACYLAW.COM MEGAN E. ROSS, ESQ., SBN 227776	·
3	MROSS@MICHAELTRACYLAW.COM LAW OFFICES OF MICHAEL TRACY	
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6	F: (866) 365-3051	
7	Attorneys for Plaintiff Douglas Roberts	
8	UNITED STATES	DISTRICT COURT
9	NORTHERN DISTRI	ICT OF CALIFORNIA
10		DIVISION
11	DOUGLAS ROBERTS , AN INDIVIDUAL;	COOKI KULINGO RE
12	Plaintiff,	PLAINTIFF'S OBJECTIONS TO DECLARATION OF KEVIN
13	vs.	DECELLES USED IN SUPPORT OF DEFENDANT'S MOTION FOR
14	TRIMAC TRANSPORTATION SERVICES	
15	(WESTERN), INC., A DELAWARE CORPORATION;	
16		(RE: DOCKET NO. 47-2)
17	Defendant.	
18		•
19	PLAINTIFF DOUGLAS ROBERTS	S objects to the Declaration of KEVIN
20	DECELLES used in support of Defendar	nt's Motion for Partial Summary Judgment
21		
22	(Document #44-8).	
23		
24		
25		
26		
27		
28		
		•
	li	-1- ATION OF KEVIN DECELLES

1	Obj. No.	Statement	Location	Objection	Ruling
2	1.	"I have reviewed the	3:19-26	Hearsay, FRE 802. To	Sustained
3		documents attached to this declaration as	4:1-3	the extent that the Declarant is attempting	Overruled
4		Exhibits 1, 2, and 3		to introduce into	
5		and compared them with the spreadsheet I	¶7	evidence the contents of these "TMW" reports,	
6		created when I ran		the contents are hearsay.	
7		the queries. <i>Exhibit 1</i> is a true and accurate		Calls for expert	Sustained
		copy of the 2008		testimony, FRE 701.	_/
8		TMW information tab in the spreadsheet		This declaration is based on statistical analysis,	V Overruled
9		I created when I ran		but the Declarant has not	
10		the query of the TMW database.		been qualified under FRE 702 as an expert in	
11		Exhibit 2 is a true and		statistical analysis.	
12		accurate copy of the			
13		2009 TMW information tab in the		·	
14		spreadsheet I created			
15		when I ran the query of the TMW			
16		database. <i>Exhibit</i> 3 is			
17		a true and accurate copy of the 2010			
18		TMW information			
		tab in the spreadsheet I created when I ran			
19		the query of the		·	v.
20		TMW database. The columns in the			
21		exhibits show the			
22		TMW system information for,			
23		among other things,			
24		the leg number, total			
25		miles, driver, branch, start date, origin			
26		state, leg completion			
27		date, destination state, and the			
28		commodity			
∠ŏ		transported. The data			

_			~~~		
1		in these exhibits is	•		
1		the same data that			
2		was inputted into the TMW system. The			
3		only difference is the			
4		format. Trimac			
		personnel regularly			
5		run reports similar to	*		1
6		these 3 exhibits in the normal course of			
7		business."			
·	2.	"In preparing to	4:4-25	Hearsay, FRE 802. To	Sustained
8		provide this		the extent that the	/
9		Declaration, I was	5:1-3	Declarant is attempting to introduce into	• Overruled
10		asked to analyze the information provided	¶8	evidence the contents of	
		in Exhibits 1-3	ll o	these "TMW" reports,	
11		related to the legs		the contents are hearsay.	
12		dispatched to the		~ 11 0	G 1
13		following drivers:		Calls for expert testimony, FRE 701.	Sustained
		Randall Banks, Martin Baudoin,		This declaration is based	Overruled
14	·	Michael Brogdon,		on statistical analysis,	
15		Kerry Bushnell, Cary		but the Declarant has not	
16		Carandang, Victor		been qualified under	
		Cunningham, Thomas Darnell,		FRE 702 as an expert in statistical analysis.	
17		Anthony Davis,		statistical alialysis.	
18		Randal Gorshe,			
19		Raymond Greene,			
		Robert Hass,			
20		Christopher Larsen, Michael Magee, Oleg	4		
21		Marchenko, Leo		:	
22		Mueller, Michael			
23		Myers, Robert			
		Penicks, Ronald			
24		Phillips, Leland Pike, Douglas Roberts,			
25		George Sabilino,			
26		David Surgick,			
		Rocky Torrecillas,			
27		Jason Vieth, and Christopher Wilks			
28		(the "Santa Clara			
				· · · · · · · · · · · · · · · · · · ·	A

1	Drivers").				
2	Specifically, I was asked to identify the				
3	following:				
4	a. The total number				
5	of Santa Clara				
6	Drivers dispatched on legs that were (1)				
7	from CA to another state, (2) between				
·	two non-CA states,				
8	and (3) from another state to CA ("out-of-				
9	state legs").				
10	b. The total number				
11	of Santa Clara				
12	Drivers dispatched on local California			*	,
13	deliveries				
14	of argon in California from 2008-2010.				
15	c. The total number				
16	of legs dispatched to				
17	the Santa Clara Drivers in 2008,			•	,
18	2009, and				
19	2010.			1	
20	d. The total number			-	
21	of out-of-state legs dispatched to the				
22	Santa Clara Drivers				
23	for 2008,2009,2010.		-		
24	e. The total number				
25	of legs of argon dispatched to the	A Company			
26	Santa Clara Drivers for local delivery in				
27	California in 2008,				
28	2009, and 2010.				
		-d	,		

1		f. The total miles			
		driven on all legs			
2		dispatched to the Santa Clara Drivers			
3		in 2008, 2009,2010.			
4		2000, 2007,			
		g. The total miles			
5		driven on all legs			
6		dispatched to the Santa Clara Drivers			
7		on out-of-state legs in			
8		2008,2009,2010.			
		h. The total number			
9		of miles driven on the			
10		legs of argon			
11		dispatched to the			
12		Santa Clara Drivers for local			
		delivery in California			
13		in 2008, 2009, and			
14		2010.			
15		i. A list of the			
		products that were			
16		hauled on out-of-state			
17		legs during 2008 and 2010."			
18	3.	"A summary of my	5:11-21	Lacks personal	Sustained
19		analysis of the		knowledge, FRE 602.	
		information	¶10	Hanney EDE 900 To	<u>▼</u> Overruled
20		contained in <i>Exhibit</i> 1-3 is attached to this		Hearsay, FRE 802. To the extent that the	
21		declaration as Exhibit		Declarant is attamenting	-overruled
22		4 (the "Summary").		to introduce into	- CARICICALOR V
23		Exhibit 4 contains		evidence the contents of	Sustained
		three tables. The first table is titled		these "TMW" reports, the contents are hearsay.	_ Sustained
24		"Summary of Santa		and continue are meaning.	Overruled
25		Clara Drivers from		Calls for expert	
26		2008-2010." The		testimony, FRE 701. This declaration is based	
1		second column of the first table shows the		on statistical analysis,	
27		total number of Santa		but the Declarant has not	
28	` 	Clara Drivers		been qualified under	

_				, n
1	dispatched on either		FRE 702 as an expert in	
	an out-of-state leg or		statistical analysis.	
2	local argon leg. This			
3	number was derived			
	from combining the list of 20 Santa Clara			
4	Drivers that hauled a			
5	local argon leg and			
	the 16 Santa Clara			
6	Drivers that hauled			
7	an out-of-state leg.			
8	The third column			
	shows the percentage			
9	of Santa Clara Drivers who hauled			
10	those legs by	ļ		
	dividing the number			
11	in the second column			
12	by 25, the number of			
13	Santa Clara Drivers.			
1.5	The fourth column			
14	shows the total number of Santa			
15	Clara Drivers who			
	were dispatched on			
16	out-of-state legs. The			
17	fifth column shows			
18	the percentage of			
	Santa Clara Drivers who hauled those			
19	legs by dividing the	:		
20	number in the second			
	column by 25, the			
21	number of Santa			
22	Clara Drivers."			
23	4. "The second table in	5:22-26	Lacks personal	Sustained
l	the Summary is titled "Summary of	6:1-8	knowledge, FRE 602.	Overruled
24	Interstate Legs from	0.1-0	Hearsay, FRE 802. To	- Overrand
25	2008-2010." The	¶11	the extent that the	
	second column of the	1 "	Declarant is attempting -	OVERRULED
26	table shows the total		to introduce into	
27	number of legs		evidence the contents of	
28	dispatched to Santa		these "TMW" reports,	Sustained
۷٥	Clara Drivers in	<u> </u>	the contents are hearsay.	
1				

1	2008, 2009, and			▼ Overruled
$1 \parallel$	2010. Legs that were		Calls for expert	
2	dispatched to more		testimony, FRE 701.	
3	than one driver to		This declaration is based	
	complete were counted twice. The		on statistical analysis, but the Declarant has not	
4	third column of the		been qualified under	
5	table shows the total		FRE 702 as an expert in	
	number of out-of-		statistical analysis.	
6	state legs and local			
7	argon legs that were			
8	dispatched in 2008,		•	
	2009, and 2010. The fourth column of the			
9	table shows the			
10	percentage of			
11	interstate legs			
11	compared to the total			
12	number of legs by			
13	dividing the number			
	of legs in the third column by the			
14	number of legs in			
15	second column. The			
1.6	fifth column of the			
16	table shows total			·
17	number of miles		•	İ
18	driven on all of the			
	legs dispatched in 2008, 2009, and	į		
19	2010. The sixth			
20	column of the table			
21	shows the number of			
	miles on out-of-state			
22	legs and local argon			
23	legs. For the fifth and sixth columns, the			
	miles related to legs			1
24	that were dispatched			
25	to more than one			
26	driver were only			ļ
	counted once.			
27	Finally, the seventh column shows the			
28	percentage of			
	porcontage of			

1		interstate miles driven by the Santa			
2		Clara Drivers by dividing the number			
3		of miles in the sixth			
4	, ,	column by the number of miles in			`
5		the fifth column."			
6	5.	"The third table in	6:9-20	Lacks personal	Sustained
7		the Summary is titled "Summary of Out-of-	¶12	knowledge, FRE 602.	Overruled
		State Legs from	+ -	Hearsay, FRE 802. To	
8		2008-2010." The	:	the extent that the	
9		second column of the table shows the total		Declarant is attempting to introduce into	-overruled
10		number of legs		evidence the contents of	
11		dispatched to Santa		these "TMW" reports, the contents are hearsay.	Sustained
12		Clara Drivers in 2008, 2009, and		me contems are nearsay.	✓ Overruled
		2010. Legs that were		Calls for expert	
13		dispatched to more than one driver to		testimony, FRE 701. This declaration is based	
14		complete were		on statistical analysis,	
15		counted twice. The		but the Declarant has not	
16		third column of the table shows the total		been qualified under FRE 702 as an expert in	
17		number of out-of-		statistical analysis.	
18		state legs that were			
		dispatched in 2008,2009, and 2010.		·	
19		The fourth column of			
20		the table shows the			
21		percentage of out-of- state legs compared			
22		to the total number of			
23		legs by dividing the			
		number of legs in the third column by the			
24		number of legs in			
25		second column. The fifth column of the			
26		table shows total			
27		number of miles			
28		driven on all of the legs dispatched in			
		1 logo dispatched in	1	<u></u>	1

1		2008,2009, and 2010. The sixth column of			
2		the table shows the			
		number of miles on		•	
3		out-of-state legs. For			
4		the fifth and sixth			
		columns, the miles			
5		related to legs			
6		dispatched to more than one driver were			
7		only counted once.			
		Finally, the seventh			
8		column shows the			
9		percentage of out-of-			
		state miles driven by			
10		the Santa Clara			
11		Drivers by dividing the number of miles			1
12		in the sixth column			
14		by the number of			
13		miles in the fifth			ļ
14		column."			
	6.	"The following	6:21-22	Lacks personal	SUBTAINED
15		products were hauled	4 12	knowledge, FRE 602.	3000
16		on out-of-state legs from 2008 to 2010:	¶13		
17		Argon, Nitrogen,			
1/		Oxygen, Hydrogen			!
18		Liquid Cryogenic,		· ·	ļ
19		Helium, Helium			
		Gaseous."		·	
20					
21					

DATED: May 21, 2013

22

23

LAW OFFICES OF MICHAEL TRACY

24
25 F IS SO ORDERED: By
26
27 HOWARD R.LLOYD
U.S. MAGISTRATE JUDGE
28
DATE: 930 13

MEGAN E. ROSS Attorney for Plaintiff Douglas Roberts

/s/ Megan E. Ross

-9-

		· •			
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	Irvine, CA 92614				
6	T: (949) 260-9171 F: (866) 365-3051				
7	Attorneys for Plaintiff Douglas Roberts				
8	·	DISTRICT COURT			
9	NORTHERN DISTRI	CT OF CALIFORNIA			
10	SAN JOSE	DIVISION			
11	DOUGLAS ROBERTS , AN INDIVIDUAL;	COUNCE PROPERTY AND THE			
12	Plaintiff,	PLAINTIFF'S OBJECTIONS TO DECLARATION OF JANE DELISI			
13	VS.	USED IN SUPPORT OF DEFENDANT'S MOTION OF PARTIAL SUMMARY			
14	TRIMAC TRANSPORTATION SERVICES				
15	(WESTERN), INC., A DELAWARE				
16	CORPORATION; ,	(RE: DOCKET No. 47-3)			
17	Defendant.				
18	·				
19	PLAINTIFF DOUGLAS ROBERTS	objects to the Declaration of JANE DELISI			
20	used in support of Defendant's Motion for Pa	rtial Summary Judgment.			
21	used in support of Detendant's Motion for the	itiai Sairiitai y Caaga			
22					
23					
24					
25					
26	A				
27					
28					
		-1-			
		ARATION OF JANE DELISI			
		•			

			T	Objection	Duling
1	Obj. No.	Title	Location	Objection	Ruling
2	1.	Declaration of Jane	Document	Failure to disclose the	Sustained
3		Delisi in Support of Defendant's	#44-9	witness pursuant to Rule 26(a)(1).	Overruled
4		Opposition to Plaintiff's Motion for			
5		Partial Summary	,		
6		Judgment			
7					1
8					
9					
10					
11		\$			
12	DATED:	May 21, 2013	LA	W OFFICES OF MICHAE	L TRACY
13		·	/s/	Megan E. Ross	
14			By:		D1 : 4:00
15				EGAN E. ROSS Attorney fouglas Roberts	or Plaintill
16				\wedge	
17				A = A	
18			IT	IS SO ORDERED:	
19				MM	
20				HOWARD B. LLOY U.S. MAGISTRATE JU	
2122			DA	TE: 9 30	3
23				···· // / / ·	Section 19 4 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
24				,	
25					
26					
27					
28		•			
20					
			-2		
	OBJECTIONS TO DECLARATION OF JANE DELISI				